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## THE LAWS OF SALVAGE

*By James D. Dewell, Jr., of the Connecticut Bar.*

From the moment the blocks are knocked out and the vessel kisses the water and spreads her sails to the breeze or turns her engines over and churns the water into sparkling foam, as the case may be, if she be a wind-jammer or a steamer, she becomes to the mind's eye a living creature, exciting all the admiration and interest a beautifully moulded human being does.

Who has ever seen a trim fore and after on the wind with all her sails set, her graceful topsails moving with the swell of the ocean under a blue sky, the sunlight making shadows with her sails, or watched a steamer on a clear day with a smooth sea as her prow cuts the water and curls the waves under her bows, the smoke from her funnels floating heavenward making an aerial wake, and the foam under her stern making the ocean look like a great sapphire sprinkled with diamonds, without the keenest appreciation of the serene beauty of it all?

The life of a vessel is usually long enough to take her through all the troubles and pleasures of life, but perhaps the most interesting part of her career is the rescuing or being rescued.

To hear these sturdy men who "go down to the sea in ships" tell of taking off a crew and towing in a schooner with all the masts blown out of her, or of being rescued after going through a storm, the vessel springing a leak, the weary hours at the pumps, the short rations, the days of despair, the jump of the heart when "there ariseth a little cloud out of the sea, like a man's hand" and a steamer is seen making for you, is but to feel how tame are most of our typewritten romances of to-day.

While the whole subject of Admiralty is a most delightful and inspiring study, and one that every educated lawyer should know something about, as has been so perfectly said by Mr. Curtis in his *Digest*:

"No man ever studied the Admiralty jurisdiction without being a lover of it, and certainly no branch of jurisprudence with which I am acquainted possesses in an equal degree qualities that may be called fascinating. The antiquity of its doctrines, expanding with the exigencies and growth of commerce and maritime adventure, the constant aim of its tendencies towards equity and principle, and the very important objects that fall under its cognizance,

render it attractive, when the harsher features and more rigorous rules of other systems have wearied and repelled the student," probably that branch which treats of the rescuing of lives and property, known as salvage, is the most entertaining.<sup>1</sup>

In this country and generally, there is no salvage allowed for the rescuing of lives. In England an allowance is made directly for the saving of life, but if no property is saved it does not amount to anything for there is no right of action against the owners.<sup>2</sup>

In this country while it is true that there is no direct allowance for rescuing life, the reward is generally larger if life has been saved.

Salvage is always dependent upon success, so if no property is saved there is no allowance.<sup>3</sup>

In certain instances, however, where a vessel has contributed in some way to a salvage service finally completed by others, an allowance has been made.<sup>4</sup>

As a general rule all are entitled to salvage who are in no way connected with the vessel saved and all who are connected with such vessel are not entitled to salvage, as the crew, passengers, towing tugs, etc. Neither are government employees, like life saving crews.<sup>5</sup>

There have been a few exceptions to the rule where one or some of the crew or passengers have stayed by the vessel otherwise abandoned.<sup>6</sup>

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<sup>1</sup> *The Edith L. Allen*, 139 Fed. Rep., 888.

*The Lyman M. Law*, 122 Fed. Rep., 816.

*The Pinmore*, 121 Fed. Rep., 423.

*The Umattilla*, 29 Fed. Rep., 252.

*The F. I. Merryman*, 27 Fed. Rep., 313.

*Giant's Help To One Forlorn*, *The New York Sun*, June 13, 1907.

<sup>2</sup> Carver on *Carriage by Sea*, Sec. 331, 2nd Ed.

<sup>3</sup> *The City of Puebla*, 153 Fed. Rep., 925.

*The Myrtle Tunnel*, 146 Fed. Rep., 324.

<sup>4</sup> *The Strathnevis*, 76 Fed. Rep., 855.

*The Flottbek*, 118 Fed. Rep., C. C. A., 954.

*The River Bell*, 153 Fed. Rep., 475.

<sup>5</sup> *The Olive Branch*, Fed. Cas. No. 10, 490.

*The C. F. Bielman*, 108 Fed. Rep., 878.

*The Pine Forest*, 129 Fed. Rep., C. C. A., 700.

<sup>6</sup> *The Blairean*, 2 Cranch, 240.

*The Umattilla*, 29 Fed. Rep., 252.

*Ress v. United States*, 134 Fed. Rep., 146.

Salvage, where the vessel is in the possession of her owners when she performs a service, is comparatively simple and straightforward. The allowance in each instance being what the judge thinks, under all the circumstances, is proper.

The Court in fixing the allowance usually takes into consideration:

The degree of danger from which the lives or property were rescued; the value of the property saved; the risk incurred by the salvors; the value of the property employed by the salvors and the danger to which it was exposed; the skill shown in rendering the service, and time and labor occupied; the degree of success achieved, and the proportion of value lost and saved.

It is to be regretted that these elements, which are by far the safest and most equitable to follow in determining the amount of a salvage award, have not been followed absolutely in all cases. In some cases where the vessel was a derelict while these elements have been discussed and considered, an allowance of fifty per cent has been made solely on the ground that she was a derelict. That the same elements should govern all salvage cases is made very obvious by the decision of the Supreme Court in *Post v. Jones*, 15 How., p. 150:

"The case before us is properly one of derelict. In such cases, it has frequently been asserted, as a general rule, that the compensation should not be more than half nor less than a third of the property saved. But we agree with Dr. Lushington (*The Florence*, 20 E. L. & C. E., 622) 'that the reward in derelict cases should be governed by the same principles as other salvage cases, namely: danger to property, value, risk of life, skill, labor, and the duration of the service'; and that 'no valid reason can be assigned for fixing a reward for salving derelict property at a moiety or any given proportion; and that the true principle is adequate reward, according to the circumstances of the case.'"

Mr. Justice Bradley, in *The Suliote*, 5 Fed., 99, when he said, "The allowance of anything like a uniform percentage on the value saved in such cases would be attended with inequality and injustice," decided that the allowance for salvage in all cases should be determined by considering all these elements.<sup>7</sup>

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<sup>7</sup> *The B. C. Terry*, 9 Fed. Rep., 920.

*The Annie Henderson*, 15 Fed. Rep., 550.

*The Shawmut*, 155 Fed. Rep., 476.

*Hughes on Admiralty*, p. 138.

In taking into consideration the value of the property put in jeopardy by the salvors, the cargo and freight must be excluded.<sup>8</sup>

But where the vessel performing the salvage service is chartered, it becomes a very difficult question to determine to whom the salvage compensation belongs, assuming of course, that the charter is silent on the subject.

Suppose, for example, a steamer is chartered under a charter party constituting the charterers the owners *pro hac vice*, and that the charterers manned and supplied her, and this steamer should rescue a vessel and bring her into port and be admittedly entitled to a salvage award. To whom would the award belong, that is, so far as between the owner of the steamer and the charterer?

It would seem that in such a case as is presented that the charterer ought to be entitled to that part of the salvage allowed to the vessel; for the vessel at the time belonged to the charterer and he manned and supplied her and took all the risk, and he would be responsible to her owner if in performing a salvage service she should be injured, whether it was mentioned in the charter party or not.

In the case of *The New Orleans*, heard on appeal in the United States Circuit Court, Eastern District of Louisiana, 23 Fed., 909, Judge Pardee held, upon a set of facts similar to the supposed case presented here, the following:

"The next question is, who is entitled to the owner's share of *The Raleigh's* salvage? or, in other words, who were the owners of *The Raleigh* at the time the services were rendered? The libellant Oteri was the charterer of the bare ship and machinery, etc., by the day, manning, equipping, and navigating her at his own expense, carrying his own cargoes,—the owner *pro hac vice*. At the same time, the owners' property was used to some extent and was risked in the rendition of the services of *The New Orleans*. If it were a mere question of compensation for work and labor, the owners would be entitled to nothing; but I think the case is very different, so far as it is a question of reward for the use and risk of property, and encouragement for the rendition of salvage services. Neither one had really anything to say as to whether the services should or not be rendered. The case is one to be settled on principle, for we have no authorities at hand, if such cases have been adjudged in the admiralty courts. \* \* \* It seems

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<sup>8</sup> *The Harter Act*, Sec. 3.

*Hughes on Admiralty*, p. 168.

*The Ereza*, 124 Fed. Rep., 659.

to me that the proper rule in a case like the present is to first allow to the charterers out of the salvage award their actual outlay in rendering the services,—that is, for the hire of the ship and for the pay-roll, and fuel consumed during the delay,—and then to divide the balance as a reward; and such rule will be followed in this case, so that from the \$5,000 awarded *The Raleigh* the libellant Oteri shall first be paid his actual expense in rendering the service, one-third to the owner, and one-third to the master and crew.”

Judge Pardee allowed the charterers compensation upon the theory that the charter party was a complete demise and the charterers were the owners *pro hac vice*, and allowed the owners to obtain some of the salvage compensation because their property was to some extent risked in performing the salvage services.

The inference from this case is that salvage compensation can only be allowed to charterers where the charter party is a complete demise and constitutes the charterers the owners *pro hac vice*.<sup>9</sup>

Suppose, under the case presented above, the owner did not charter a bare boat but merely chartered the vessel with the owner's crew on board for a few days, and under such a charter party that the charterer was in no sense the owner *pro hac vice*. Under such a set of facts, supposing that the steamer performed the same salvage service as suggested above, to whom would the salvage compensation as between owner and charter belong?

Following the decision of Judge Pardee in *The New Orleans* it would all go to the owner, for Judge Pardee only allowed the charterer compensation because he was the owner *pro hac vice*, the charter party being a complete demise of the vessel.

This view was taken by Judge Thomas in *The Arizonian*, in the United States District Court, Eastern District of New York, 136 Fed., 1016, where he held that the charter in that case not being a demise under which the charterer became responsible for the risks taken by the master in engaging in the salvage services, or for any negligent or wrongful act committed by him, it was not entitled to a reward made for salvage which belonged to the owner and crew. It will be noticed here, also, that Judge Thomas denied the charterer any salvage both because the charter party did not create a demise and because the charterer did not become responsible for the risk taken by the master in performing the services.

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<sup>9</sup> *Desty Shipping and Admiralty*, Sec. 420.

*Kennedy on Civil Salvage*, Vol. 2, p. 67.

*Parsons Shipping and Admiralty*, pp. 278-279.

This seems to follow the idea of Judge Pardee in the theory that the one who bears the risk should be entitled to some of the compensation, for Judge Pardee allowed the owner of the salving vessel in the case of *The New Orleans* some compensation because the owner's property was risked.

Both Judge Pardee and Judge Thomas seem to have based their decisions somewhat upon the element of risk to the salving vessel, Judge Pardee in allowing part of the salvage award to the owner because his property was to some extent risked, and Judge Thomas in denying salvage to a charterer because he took no risk in performing the salvage service.<sup>10</sup>

The United States Circuit Court of Appeals for the Second Circuit, however, took a different view of *The Arizonian*, and reversed the decision of Judge Thomas and divided the salvage equally between the charterer and owner.<sup>11</sup>

The Court in rendering its decision in *The Arizonian*, while reaching the same result that Judge Pardee did on appeal in *The New Orleans*, did so upon an entirely different theory.

Judge Pardee allowed the charterer of the salving vessel compensation because the charter party constituted the charterer the owner *pro hac vice*. The Circuit Court of Appeals in *The Arizonian*, said of this feature of the case:

"It is not pretended that the correspondence between the parties, which constituted the contract of hiring was a full demise of the tug; there can be no doubt, however, that on the day in question the appellant had bought, paid for and was entitled to the entire services of the tug."

It will be seen that the Court in *The Arizonian* did not allow salvage to the charterer because the charterer was the owner *pro hac vice*.

But the Court in *The Arizonian* seems to infer that if the charter party had been a complete demise, making the charterer the owner *pro hac vice*, that the charterer would have been entitled to the whole award, and in this, suggesting a different rule from the one applied by Judge Pardee in *The New Orleans*, where he allowed the owner one half of the salvage, although the charterer was the owner *pro hac vice*, for it says:

"On the other hand, the appellee not having parted with the ownership was entitled to remuneration for any risk the tug might

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<sup>10</sup> *The Richmond*, 181 Fed. Rep., 568-574.

<sup>11</sup> *The Arizonian*, 144 Fed. Rep., C. C. A., 81.

run while engaging in a dangerous salvage service. We are unable to see why the right to receive remuneration on account of the ownership which was retained, carries with it the right to remuneration for the services which passed, without qualification, to the appellant."

Then why, if the owner does not part with his property at all and assumes the risk, should he not be entitled to the whole award?<sup>10</sup> In both *The New Orleans* and *The Arizonian* the owner is allowed one-half the award because of the risk to his property. In *The New Orleans* the owner had parted with his tug under a charter party making the charterer the owner *pro hac vice*, and in *The Arizonian* the owner had not parted with the title to the tug under a charter party creating the charterer the owner *pro hac vice*.

In *The New Orleans* the charterer bore all the risk and in *The Arizonian* the owner of the salving vessel bore all the risk. But in both cases the owner got one-half the salvage because his property was risked.

Taking these two cases together the deduction seems to be that if a vessel were chartered under a charter party creating the charterer the owner *pro hac vice* and making the charterer responsible to the owner for any damages to the vessel while in the charterer's possession, that any salvage service performed by such vessel would belong to the charterer. But in either event whether the charter party makes the charterer the owner *pro hac vice* or not, if it is a mere matter of compensation for work and labor it is very doubtful if the owner would be entitled to anything, for the law of salvage would not apply.<sup>12</sup>

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69 Church Street, New Haven, Conn. March, 1912.

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<sup>12</sup> *The New Orleans*, 23 Fed. Rep., 909-911.